IN THE HIGH COURT OF UTTARAKHAND ATNAINITAL

Writ Petition No. 889 of 2003 (M/S)
(Old CMWP No. 8168 of 1988)

The State of Uttar Pradesh.

…..Petitioner.

Versus

1. The Addl. Commissioner, Kumaun Nainital.
2. The Addl. District Judge, Nainital.
3. The Prescribed Authority, Kashipur, Nainital.
4. Sri Ratan Singh S/O Ishwar Singh,
5. Sri Rajendra Singh S/O Ratan Singh.
6. Sri Ishwar Singh S/O Sri Ratan Singh, All residents of Gangapur Pahari, Tahsil Ramnagar, District Nainital.

….Respondents.

Sri N.P.Sah, learned Standing Counsel and Sri Gopal Narain Srivastava, Brief Holder for the State-petitioner.
None present for the respondent no. 5 & 6.

Dated May 03, 2007.

Hon'ble B.S.Verma, J.

By means of the present writ petition, the petitioner has prayed for issue a writ, order or direction in the nature of certiorari quashing the judgment and order dated 25.6.1987 (Annexure No.3 to the writ petition) whereby the Additional Commissioner (Judicial), Kumaun Region, Nainital has allowed the review application of the respondents Rajendra Singh and others and set aside the order dated 23-4-1984 passed by the Additional District Judge, Nainital and it was directed that if the legal heirs of the deceased Ratan Singh held the land more than ceiling limit, there fresh notice under Section 10(2) of the U.P. Imposition of Ceiling on Land Holdings Act, 1960, be issued to the legal heirs of Ratan Singh, tenure holder on the ground that the respondent no. 4 had expired on 17-3-1973 and moreover, the respondent no. 1 failed to appreciate the evidence in its correct perspective and has wrongly set aside the order dated 23.4.21984 passed by the

Additional District Judge, Nainital in Ceiling Appeal No. 72 of 1983.

The main ground of challenge raised by the petitioner is that the respondent nos. 5 and 6 failed to prove that the respondent no. 4 had expired on 17.3.1973 and they also utterly failed to prove that the respondent no. 4, who expired on 17.3.1973 in Civil Hospital Moradabad, is the same person to whom the notices under Section 10(2) of the Act was issued. The respondent no. 1 illegally and wrongly relying upon the statement of respondent nos. 5 and 6 and the papers furnished by them illegally allowed the review petition. According to the petitioner, it is not proved on record that the person who died on 17-3-1973 was the respondent no. 4. The respondent no. 1 erred in allowing the review application and in holding that the respondent nos. 5 and 6 are not in possession of the land more than ceiling limit.

At the outset it may be mentioned that in exercise of writ jurisdiction, reappraisal of evidence cannot be made. Whether or not the person who had expired on 17-3-1973 in the District Hospital Moradabad was respondent no.4 Ratan Singh is a finding of fact. From a bare perusal of the impugned order it is evident that the death of respondent no.4 was proved by the documentary as well as oral testimony of witness Rajendra Singh and the petitioner -State had not challenged the record of the District Hospital Moradabad proved by Diwan Singh Chauhan, witness of the respondent nos. 5 and 6. It has also been observed that the State has not cross-examined the witnesses on the point of death of respondent no.4 before the court below. The respondent no. 1 has allowed the review application on the ground that the notice under Section 10(2) of the Act was not given to the tenure holder Ratan Singh, therefore, it has been ordered that fresh notices be issued to the legal heirs of the respondent no. 4, if they are found to be possessed of land more than ceiling limit.

Having heard the submissions of the learned Standing Counsel appearing on behalf of the State vis-à-vis the impugned order dated 25.6.1987, I do not find any perversity in the impugned order. It reveals that Ratan Singh, respondent no. 4, had already died prior to the filing of the writ petition and he was wrongly arrayed as a respondent in the writ petition. The writ petition is devoid of merit and is liable to be dismissed.

The writ petition is dismissed. Costs easy.

All applications stand disposed of.

(B.S. Verma, J.)

RCP